

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:06-CR-00189-RJC

USA

v.

JESSYE WAYNE POWELL (1)

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ORDER

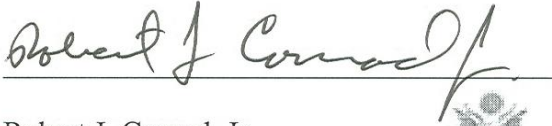
**THIS MATTER** is before the Court upon motions of the defendant to dismiss the judgment and for release on bond pending resolution of the motion to dismiss. (Doc. Nos. 185, 186).

The defendant argues that the Court lacks jurisdiction over him based on the claim that there is no proof that the grand jurors voted to indict him. (Doc. No. 185: Motion at 2). However, a claim alleging a defect in the institution of a prosecution, including error in the grand jury proceeding, must be made prior to trial. Fed. R. Crim. P. 12(b)(3)(A)(v). The defendant, therefore, waived this issue when he entered his guilty plea on August 13, 2007. United States v. Edwards, 188 F.3d 230, 237 (4th Cir. 1999) (failure to raise claim of defect in institution of prosecution pretrial constitutes a waiver under Rule 12(b)).

**IT IS, THEREFORE, ORDERED** that the defendant's motion to dismiss, (Doc. No. 185), is **DENIED** and his motion for release on bond, (Doc. No. 186), is **MOOT**.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, and to the United States Attorney.

Signed: July 6, 2020

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
United States District Judge

